

These are the averments of the bill, and it is consequently in its frame and structure, a bill *quia timet*, to prevent some future impending injury to the rights and interests of the plaintiff, and not because an injury has already occurred. The ordinary form in which this court interposes its aid in cases of this description is by injunction and the appointment of a receiver.

These parties having been partners in trade, it is very clear that upon the dissolution of the connexion, each partner was entitled to assist in collecting the assets, and paying, and in winding up the affairs of the firm, and that any interference with this mutual right, or the exclusion by either partner of the other, from the enjoyment of it, would justify this court in taking the management of the concern into its own hands. But in this case the parties have by agreement delegated this mutual and common right to one of the partners, and therefore the exercise by him of the exclusive power in question, can furnish no ground of complaint. *Story on Partnership, sec. 328.* The legal right to the possession and control of the funds of this partnership, is in the defendant, and in such a case as established by all the authorities, the court interferes with great reluctance. An abuse or danger of abuse must be shown before the *bona fide* possessor will be displaced. *Story's Commentaries on Equity, secs. 835, 836.* Upon one or two recent occasions, this court has had occasion to speak upon this subject which need not now be enlarged upon.

But although the defendant under the terms of his contract with the plaintiff in this case, is entitled to the possession of the funds, that is, is a *bona fide* possessor, still if he is wasting or misapplying them, or there is danger from his insolvency, fraud or misconduct, the court would not hesitate to displace him and appoint an officer of its own in his place.

The bill alleges such waste, misapplication and danger, and upon these allegations alone can the interposition of this court by injunction and the appointment of a receiver be vindicated. But these allegations are all denied by the answer, and consequently the equity upon which the court proceeded in awarding the injunction and appointing a receiver is removed.